UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
FOURTH REGION

PHILADELPHIA NEWSPAPERS, INC. d/b/a THE PHILADELPHIA INQUIRER Employer and Case 4–RC–19607 FOOD DRIVERS, HELPERS & WAREHOUSEMEN EMPLOYEES PHILADELPHIA & VICINITY, AND CAMDEN AND VICINITY, NEW JERSEY — LOCAL 500 A/W INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL–CIO Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended (hereinafter referred to as the Act), a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has designated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

2. The hearing officer's rulings are free from prejudicial error and are hereby affirmed.

3. The labor organization involved claims to represent certain alleged employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain alleged employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Employer produces The Philadelphia Inquirer (hereinafter called the Inquirer). The Petitioner seeks to represent a unit consisting of approximately 50 "independent service contractors" (ISCs) who pick up newspapers at the Employer's 525 East Cheltenham Avenue, Philadelphia, Pennsylvania warehouse (hereinafter

called the Chelten warehouse) and then deliver them to subscribers' homes. Contrary to the Petitioner, the Employer contends that its ISCs are independent contractors and thus not employees within the meaning of Section 2(3) of the Act.

The Inquirer is a daily morning newspaper with approximately 2,000 home delivery areas and about 1,400 ISCs. Circulation Director Edwin Franze is responsible for the sale and distribution of the Inquirer to residential subscribers. Eight regional managers report to Franze, and about 70 District Managers report to the regional managers. There are 36 warehouses where ISCs pick up the newspapers for delivery. District managers work out of the warehouses.

There are two different kinds of ISCs: regular ISCs, who engage in billing, collection and newspaper distribution and solicit new customers; and "CAPP" ISCs, who generally handle only distribution and solicitation. An ISC may not work without executing the Employer's "Independent Home Delivery Service Contractor Agreement" (hereinafter called ISC Agreement) which is for a fixed term.[1] A District Manager generally signs the ISC Agreement on behalf of the Employer. There are two different standard ISC Agreements — one for regular ISCs, and one for CAPP ISCs. The Agreements are very similar except that the CAPP Agreement lacks various provisions related to billing and collection.[2] District Managers have authority to negotiate certain provisions of the ISC Agreement, including the duration of the agreement (from six months to three years, with one year as the usual duration) and many of the financial provisions of the agreement as discussed below. All District Managers have about the same authority and latitude in negotiating ISC Agreements within general budgetary limits, which may be exceeded with the approval of higher management.

Each ISC Agreement provides that the ISC, "is and will continue to be a self-employed independent contractor and not an employee of PNI [the Employer, Philadelphia Newspapers, Inc.]." An ISC is free to "engage its own subcontractors or employees as it considers necessary or desirable" and has sole discretion to manage those assistants. Also, each ISC Agreement obligates the ISC to indemnify the Employer for any injuries, damages, or other losses sustained in connection with newspaper deliveries.

The newspaper remains the property of the Employer until delivery to the subscriber, but after the ISC picks up the newspapers, the ISC is responsible for any damaged or lost newspapers. The ISC "bears all risks of loss incurred in the running of [the ISC's] business." Generally, either party, upon 30 days' written notice or if a material breach occurs, may terminate an ISC Agreement. If there is no justification for contract termination, and adequate notice has not been given, liquidated damages can be recovered. So that the Employer may reduce its risk of loss, each ISC is required to pay a non-refundable security fee each month or

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[1]Chelten warehouse ISC Christopher Long testified that for the first three to six months of his association with the Inquirer (beginning sometime in 1995), he worked without an ISC Agreement. The record shows that during the time relevant to the instant petition, the Employer required each ISC to sign an ISC Agreement at the beginning of the ISC's association with the Employer.

[2]The CAPP ISC Agreement requires a CAPP ISC, upon receipt of notification and information about delinquent subscribers from the Employer, to attempt to collect monies owed by these subscribers and to provide information about those attempts.

may, with the Employer's approval, post a cash security bond with an approved bonding company.[3] An ISC has no proprietary interest in his or her delivery routes.

In each delivery area there are an average of 250 daily customers and 350 Sunday-only subscribers.[4] An ISC is contractually required to "use its best efforts" to deliver a dry, undamaged, complete newspaper to each subscriber in his or her delivery area by the time specified in the ISC Agreement. The Employer will not pay an ISC a delivery fee if the paper is not delivered that day. When the ISC picks up papers at a warehouse, the ISC receives a "galley" (which shows the number of copies given to the ISC) and "bundle mail," which shows new information from subscribers. The information in the "bundle mail" ranges from starting deliveries to a new subscriber, stopping deliveries for vacations, terminated deliveries, and customer complaints and requests. The Employer may not unilaterally change the delivery area.

The ISC must keep a complete record of all subscribers for billing, service, and collection purposes. Except where a CAPP ISC is attempting to resolve delinquent accounts, an ISC is not required regularly to provide the Employer with financial information or documents such as subscriber credit status lists or copies of bills. The subscriber list and all bill-collection records must be returned to the Employer if the ISC Agreement expires and is not renewed.

Bundles of the city edition newspapers are scheduled to arrive at the Chelten warehouse by about 4:00 a.m. Monday through Saturday, and by about 5:15 a.m. on Sunday. The ISC is not required to pick up newspapers at any particular time. Also, the Employer does not dictate the order of delivery to individual subscribers. However, the newspapers must be delivered by the time specified in the ISC's Agreement, which is negotiable. Typical delivery times are 6:00 or 6:30 a.m. daily and 7:00 or 8:00 a.m. Sunday.

The ISC is not required to report to a District Manager when he or she picks up newspapers. But the ISC and the District Manager at that particular warehouse may discuss issues such as incorrect addresses on the subscriber list, a new subscriber, a customer complaint, or a complaint by the ISC about a procedure. ISC Christopher Long, who picks up papers at Chelten and at another warehouse for his Germantown/Mt. Airy route, testified that he sees District Manager Frank Bellingham about four times a week. ISCs do not always have contact with the same District Manager, including the District Manager who signed the ISC's Agreement, because the managers are transferred to different warehouses, and the ISCs may pick up papers at different warehouses. No manager ever rides with an ISC to supervise or otherwise monitor his or her performance, but a manager might go with an ISC to work out a problem with a customer with a longstanding complaint.

The ISCs, each of whom must be at least 18 years old, do not wear any uniforms or nametags. Also, they generally are not allowed to use or display the name, logo, or other design

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[3]As described above, on occasion the Employer may ask CAPP ISCs to collect from delinquent subscribers; generally, CAPP ISCs do not bill or collect.

ISC Long testified that he repeatedly complained to District Managers about paying the non-refundable security fee, but the record shows that Long never proposed an alternative arrangement.

[4]"Daily" includes Saturday.

associated with the Employer on their vehicles or other equipment. The Employer provides only a few delivery-related items to some ISCs. They are: plastic bags that may bear the Employer's name or logo; rubber bands; subscriber billing envelopes; subscriber feedback or survey cards; and delivery cards notifying the subscriber that a paper was delivered that day and advising the subscriber to call the Employer's customer service department about any replacement paper. The envelopes and cards show the Employer's name and logo. The customer usually receives the subscriber feedback card directly from the Employer about a month after delivery begins. The return address on the card is the Employer's Circulation Subscriber Services department. The billing envelope should show the Employer's or the regular ISC's address, depending on who bills that subscriber. An ISC is not required to use the Employer's billing envelopes or the delivery cards.[5] Some regular ISCs use computerized invoices and mail them to customers or include the invoices with the newspapers. The Employer allows an ISC to give customers a card with the ISC's name and phone number on it, but the Employer must pre-approve a new form of delivery card. Although the Employer may give ISCs plastic bags and rubber bands, the ISCs are not required to use them. Rather, an ISC may use his or her own bags and bands or none at all. An ISC is free to communicate with any subscriber orally or in writing. Subscribers contact the Employer or the ISCs about complaints or other delivery issues.

ISCs are solely responsible for the expenses of finding, fueling and maintaining a vehicle to use for their deliveries. The Employer does not provide subsidies of any kind, either by direct payments or by referring ISCs to a particular garage with which the Employer has a special relationship.[6] There are no restrictions on the kind or color of vehicle used for deliveries. An ISC might use his or her own vehicle or may purchase one. Also, some ISCs modify their vehicles to facilitate deliveries, such as removing a seat from inside the car or truck to make room for the newspapers. The Employer may ask an ISC for proof of appropriate automobile and liability insurance. ISCs are free to use their delivery vehicles to distribute a competing newspaper or for any other purpose.

At their own cost, ISCs use other equipment, including computers, adding machines, beepers, cell phones, and office supplies. Postage expenses are not reimbursed. ISCs are not allowed to use equipment at any of the Employer's offices or warehouses. ISC Long testified that he buys and sends Christmas cards to his customers and that he keeps any tips he may receive from his customers.

There is no base compensation given to any ISC and the Employer provides ISCs with no fringe benefits. Each ISC is paid on a per-piece rate rather than on an hourly or salaried basis. The daily Inquirer subscription rate is \$.45 and the Sunday rate is \$1.60. An ISC's delivery fee is negotiable to some extent. Delivery fees generally range from \$.10 per piece to \$.34 per piece for a daily paper, and from \$.28 to \$.72 for a Sunday paper. The record shows that the Employer

[5] There was conflicting testimony about whether ISCs are required to give customers subscriber feedback cards. Circulation Director Franze testified that there is no such requirement, but ISC Long testified that several times at the warehouse a District Manager or someone else handed him subscriber feedback cards and told him to distribute them with the papers.

[6] Long testified that when he began distributing the Inquirer in 1995, his then District Manager indicated that the Employer would reimburse Long for gas and other out-of-pocket expenses. However, the record does not show that any such payment was made. In addition, the record shows that at the time relevant to the instant petition, the Employer did not reimburse any ISC for any out-of-pocket expenses.

has negotiated delivery fees with some Chelten warehouse ISCs, paying more, for example, to ISCs willing to cover a difficult delivery area or where it is difficult to find a replacement ISC. On the other hand, the Employer may be unwilling to negotiate the fee if the Employer believes that it is in a strong bargaining position.

An ISC may serve more than one delivery area and there is no limit on the number of areas an ISC may serve. The delivery area may be changed by mutual agreement during the contract term. An ISC may also obtain from the Employer free samples of the Inquirer to distribute to potential subscribers and a list of potential subscribers with their addresses. An ISC does not pay for the samples and is not paid for these deliveries. The amount of samples is negotiable, ranging from 0 to 50.[7] The Employer generally proposes to an ISC a "Solicitation Incentive Fee" that varies from $3.00 to $12.00, depending upon the kind of subscription, for every subscription sold. An ISC may distribute free samples in any Inquirer distribution area, not just in his or her own area. There is no requirement that an ISC must bring in a minimum number of new subscribers or spend a certain amount of time soliciting them.

An ISC also may earn more money by his or her collection efforts. If a regular ISC pays to the Employer 100 percent of the monthly subscription costs for the subscribers in his or her delivery area, the ISC receives a "Collection Incentive," which is negotiable. It could be a flat fee of several hundred dollars or a percentage of monies collected. A regular ISC may pay for a subscriber's monthly subscription without having yet collected the payment from the subscriber in order to obtain the collection incentive. Regular ISCs may negotiate changes in the billing provisions of the ISC Agreement such that subscribers are billed quarterly or semiannually rather than monthly. The Employer promises CAPP ISCs a collection incentive of 30 percent of the monies collected from delinquent subscribers. Through negotiations, redelivery charges may be reduced, from $4.00 to $2.00, or eliminated altogether if the ISC is able and willing to perform redeliveries. An ISC who has difficulty collecting monies from a subscriber can refuse to continue billing that subscriber and pay a charge to the Employer for billing and collecting.

The Employer pays CAPP ISCs with a weekly check. Regular ISCs, who bill and collect from most or all of their customers, receive bill payments directly from customers, so the Employer does not send them checks. Rather, the Employer sends a regular ISC a "monthly settlement," which is the net result of what the regular ISC owes the Employer for the papers (at regular subscription price), plus any charges, and minus the ISC's delivery and other fees. Sometimes a customer makes a check payable to the Employer although the ISC is responsible for billing that customer. If that occurs, the ISC forwards the check to the Employer for credit to the ISC's account. Generally, the "monthly settlement" resembles a bill because it shows that the regular ISC owes money to the Employer. Subscribers generally may decide whether they wish to be billed by and pay the ISC or by the Employer, though an ISC may decide not to bill and collect from a particular subscriber. Where a regular ISC does not bill and collect from the customer, the Employer charges the ISC 5 percent of the monies credited to the customer's account.

In their sole discretion, ISCs may use anyone to perform any of the ISCs' duties. For example, a regular ISC may have an assistant who picks up and delivers all of the ICS's papers and who investigates potential subscribers. An ISC's assistant is not subject to the Employer's

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[7]Long, who has been a regular ISC for over three years, testified that he only recently heard about the free sample papers. However, he also recently signed for the first time an ISC Agreement in the form proposed to him by District Manager Frank Bellingham. The standard agreement proposed by the Employer to a regular ISC contains a solicitation provision allowing a regular ISC up to 50 samples each day and a CAPP ISC, up to 25 samples a day.

approval or control in any way. Moreover, the ISCs are not required to report to the Employer any information about their assistants. When an ISC is ill or otherwise unable to deliver papers on a particular day, the ISC may pay a "floater" at the Chelten warehouse to handle his or her deliveries that day.

ISCs do not have contact with the Employer's Human Resources department, nor does the Employer keep track of the ISCs' hours and days worked, delivery miles, or net profits. The Employer does not withhold any taxes, and issues IRS Form 1099, not IRS Form W-2, to the ISCs. There is no workers' compensation or unemployment insurance for ISCs. The Employer maintains no records about the ISCs except for a copy of the executed ISC Agreements and records of the ISCs' account balances.

Unlike potential employees, the Employer does not require an ISC candidate to take a drug test or fill out an employment application. An ISC candidate meets with the District Manager who is associated with the delivery area or route in which the candidate is interested. The manager interviews the candidate and does a credit check. According to Circulation Director Franze, the District Manager also should consider any prior delivery experience, communication skills and — if a regular ISC slot is at issue — accounting skills, because an ISC independently manages money and people. If the District Manager decides that a particular individual is a promising candidate, the manager drives him or her around the proposed delivery route and delivers papers. If the candidate expresses serious interest in becoming an ISC, the manager gives the candidate one of two standard, proposed ISC Agreements — the regular ISC agreement or the CAPP agreement. If, after any negotiations, the candidate and the manager sign an ISC agreement, the ISC may start work with a subscriber list provided by the Employer. [8] An ISC does not receive training of any kind other than watching the District Manager make deliveries on the route.

There is a progressive disciplinary system for the Employer's employees, but not for ISCs. An ISC may not be suspended, but may be summoned by a District Manager to discuss a particular complaint. Pursuant to the ISC Agreement, if either party materially breaches the Agreement, the other party may terminate it immediately. An ISC breaches the agreement if the ISC receives more complaints per month than an agreed-upon maximum, usually one complaint per thousand daily papers and one complaint per thousand Sunday papers; the ISC fails or refuses to deliver papers; or if the ISC fails to maintain "acceptable" subscriber relations. The Employer breaches the agreement if it fails to pay the ISC. An customer's complaint that an ISC failed to deliver a paper may be "chargeable" or not depending on whether the ISC actually delivered the paper which was subsequently stolen or whether the ISC failed to deliver the paper at all or within the prescribed time. There is no provision in the agreement for a method for resolving disputes between the ISC and the Employer. The Employer may terminate an ISC contract for any individual who breaches the Agreement or, at its discretion, notify the ISC of his or her breach and give them an opportunity to come into compliance with the Agreement, usually within 30 days.

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[8]In general, the District Manager is the only Employer representative involved in negotiating or signing the ISC Agreement. However, sometimes the regional manager or circulation director may be required to approve certain terms.

In addition to delivering the Inquirer, the ISC is free to "engage in any other business activities it desires," including distributing competing newspapers or holding down a separate full-time job. The ISC is responsible for any damage caused to a subscriber's person or property, or to anyone else, while making newspaper deliveries.

Under Section 2(3) of the Act, the term "employee" shall not include "any individual having the status of an independent contractor." Over 30 years ago, the Supreme Court, agreeing with the Board that "debit agents" of an insurance company were employees, held that the "common-law agency test" must be applied to determine whether the agents were independent contractors or employees. *NLRB v. United Insurance Co.*, 390 U.S. 254, 256, 67 LRRM 2649, 2650 (1968). "[T]here is no short-hand formula or magic phrase that can be applied to find the answer, but all of the incidents of the relationship must be assessed and weighed with no one factor being decisive. What is important is that the total factual context is assessed in light of the pertinent common-law agency principles." Id. at 258, 67 LRRM at 2651.

The Board recently emphasized that a "common-law agency test" rather than a "right-to-control test" must be used to determine employee status, even though criteria in a right-to-control test also figured in common-law agency analysis. *Dial-A-Mattress Operating Corp.*, 326 NLRB No. 75, slip op. at 6-7 (Aug. 27, 1998); *Roadway Package System*, 326 NLRB No. 72, slip op. at 7-9, 11 fn.37 (Aug. 27, 1998) ("pick-up and delivery drivers" were deemed employees). In *Dial-A-Mattress*, where "owner-operators" who delivered mattresses were adjudged independent contractors, the Board enumerated 10 criteria of the common-law agency test: identity, contracts between the alleged independent contractors and the employer, duties, equipment, compensation, work schedules, use of assistants, rules and personnel policies, discipline, and entrepreneurial activities. 326 NLRB No. 75, slip op. at 1-6. Two additional relevant factors are how the work in question is performed "'in the locality'" and "'[w]hether or not the parties believe they are creating the relation of master and servant.'" *Roadway*, supra, 326 NLRB No. 72, slip op. at 8 fn.32.

Applying the common-law agency test, the evidence shows that the ISCs — regular and CAPP — are independent contractors. "There is no minimum compensation guaranteed the [ISCs] to minimize their risk of performing deliveries for [the Employer] . . .." *Dial-A-Mattress*, supra, 326 NLRB No. 75, slip op. at 8. Although they have no proprietary interests in their routes, ISCs have significant entrepreneurial opportunities. ISCs are free to deliver competing newspapers and some have full-time jobs in addition to distributing the Inquirer. Id. at 8-9. ISCs enjoy free samples and monetary incentives, including the solicitation and collection incentives, to maintain and to expand their customer lists. They may obtain more than one Inquirer delivery area. ISCs are responsible for any damages caused in the deliveries.

Many contractual provisions are negotiable. For example, ISCs may negotiate contract terms shorter or longer than one year, different delivery fees or collection incentives, redelivery provisions or, for regular ISCs, how often to bill and collect from subscribers. Being an entrepreneur involves risk-taking. *Dial-A-Mattress*, supra, 326 NLRB No. 75, slip op. at 6. Billing and collecting from subscribers less frequently than each month means that a regular ISC decides to risk extending credit to that subscriber, since the ISC is settling his or her account with the Employer on a monthly basis. Redelivery is a monetary or time expense for an ISC, and an ISC may exercise his or her best business judgment in deciding how to negotiate that issue. Also, a regular ISC may decide that paying the Employer's 5 percent charge for billing a subscriber is a much better alternative to risking the loss of most or all monies owed on a subscription. Thus, a regular ISC can decide to shift the risk of loss to the Employer by refusing to bill and collect from a particular subscriber who has failed to make timely payments.

Importantly, as in other cases where an independent contractor relationship has been found, the Inquirer ISCs are free to obtain the services of anyone they choose to fulfill their contractual responsibilities to the Employer, and are completely responsible for the actions of those assistants. *Dial-A-Mattress*, supra, 326 NLRB No. 75, slip op. at 9 (drivers' use of helpers indicated independent contractor status); *Fort Wayne Newspapers*, 263 NLRB 854, 855 (1982) (same). "Each driver in his discretion can decide not to work on any particular day — a freedom that further links his compensation to his personal initiative and effort." *NLRB v. Amber Delivery Service*, 651 F.2d 57, 61, 107 LRRM 3067, 3070 (1st Cir. 1981) (recognizing facts in support of independent contractor status but ultimately refusing to disagree with the Board that drivers were employees).

Also as in *Dial-A-Mattress*, the Employer "plays no part in the selection, acquisition, ownership, financing, inspection, or maintenance of the vehicles used by the [ISCs]." 326 NLRB No. 75, slip op. at 8. "The fact of ownership and the attendant financial arrangements also afford each driver some opportunity for entrepreneurial enterprise, since each reduction in operating costs will provide a corresponding increase in his profit." *NLRB v. Amber Delivery Service*, supra, 651 F.2d at 61, 107 LRRM at 3070. The Employer gives almost no equipment to the ISCs and does not train them.

ISCs are contractually required to indemnify the Employer for any injuries, damages, or other losses sustained in connection with the newspaper deliveries. "In contrast, in employer-employee relationships, employers generally assume the risk of these third party damages, and do not require indemnification from their employees." *Dial-A-Mattress*, supra, 326 NLRB No. 75, slip op. at 8. The ISC Agreements for regular and CAPP ISCs clearly show that the Employer intended them to be independent contractors.

Inquirer ISCs work in circumstances quite distinguishable from those in *Roadway*, where the Board decided that the drivers were employees. 326 NLRB No. 72, slip op. at 13. For example, *Roadway* drivers were required to wear employer-approved uniforms and drive employer-approved vehicles with the employer's name on them. Id., sip op. at 10. Inquirer ISCs are not required to wear any uniforms or nametags showing association with the Employer, and are prohibited from putting the Employer's name or logo on their vehicles. In contrast to the ISCs' easy use of personal vehicles and freedom to engage in other business activities (even holding full-time jobs elsewhere), Roadway vehicles may not be easily used during off-duty hours and are "not easily flexible or susceptible to modifications or adaptations to other types of use." Id. Also, Roadway established "a system of minimum and maximum number of packages and customer stops assigned to the drivers," so the drivers' routes "may be unilaterally reconfigured." Id., slip op. at 11. Inquirer ISCs have no such constraints. Roadway drivers benefited from various forms of "vehicle assistance" and a "business support package." Id. The Employer does not provide any such assistance to the Inquirer ISCs. Moreover, while an ISC may fulfill all of his or her responsibilities without ever delivering a newspaper, a Roadway driver "must show up for work each day to fulfill his ISC Agreement obligations." Id. at 12.

The Employer treats the ISCs very differently from its employees. A potential ISC is not assessed and tested like a potential employee. No fringe employee benefits or subsidies are provided to ISCs. There are no offices or other facilities for the ISCs. Although the Employer will contact the ISC (through bundle mail or otherwise) about a customer complaint and occasionally may attempt to work out a problem with a customer, the Employer does not monitor, supervise, or control the means and method of the ISCs' work. An ISC cannot be suspended or otherwise subjected to the progressive disciplinary system imposed upon employees. Sending a 30-day notice letter to an ISC about exceeding the complaint per thousand standard is not disciplinary action; the Employer is simply notifying the ISC that the Employer exercised its option under the ISC Agreement to give the ISC another 30 days to comply with the standard rather than to terminate the ISC Agreement immediately upon that material breach.

The instant case strongly resembles *Evening News*, 308 NLRB 563 (1992), where the Board denied requests for review of the Acting Regional Director's decision that the "motor route carriers" or "drivers" were independent contractors. The following facts (among others) were considered in that decision:

> The drivers sign independent contractor agreements. The Employer does not subtract any withholding amounts from their wages and provides the drivers with IRS 1099 forms . . . No benefits are offered to the drivers. . . . They are not required to drive the routes themselves . . . Drivers are free to complete their routes in whatever order they wish.

Id. at 564-565. The Acting Regional Director also emphasized that drivers used their own vehicles for deliveries and were not reimbursed for vehicle expenses, and that the Employer neither monitored drivers during their routes nor disciplined them. Id. at 564-65. Likewise, the drivers in *Thomson Newspaper*, 273 NLRB 350 (1984), were deemed independent contractors in circumstances very similar to the ones presented by the subject case. In fact, the *Thomson Newspaper* drivers were independent contractors although they did not sign an ISC Agreement with their employer, and although the employer had "the right to unilaterally change the composition of the routes." Id.

Accordingly, I find that the ISCs are independent contractors, not employees within the meaning of Section 2(3) of the Act.

ORDER

Having found that the individuals in the unit sought by the Petitioner herein are independent contractors and not employees,

IT IS HEREBY ORDERED that the Petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, NW, Room 11613, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by **March 25, 1999**.

Dated March 11, 1999

at Philadelphia, PA

/s/ Dorothy L. Moore-Duncan______
DOROTHY L. MOORE-DUNCAN
Regional Director, Region Four

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177–2484–5000
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401–2575–5600
460–7550–6200
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